

Service Date: February 22, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF Valley	)	UTILITY DIVISION
Telecommunications Inc.'s Implementation of	)	
1+ IntraLATA Dialing Parity	)	DOCKET NO. D98.10.236
	)	
	)	ORDER NO. 6148

**FINAL ORDER**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

1. On December 4, 1998, Valley Telecommunications Inc. (Valley) filed its Application for Approval of its IntraLATA Equal Access Implementation Plan (Plan) with the Montana Public Service Commission (Commission). Valley's Plan requests approval of the procedures and process it intends to use to implement 1+ intraLATA dialing parity (also known as intraLATA equal access).
2. Valley filed its Plan in response to a bona fide request (BFR) it received from AT&T Communications of the Mountain States, Inc. (AT&T) on October 6, 1998. AT&T's BFR requested that Valley implement intraLATA equal access in all its exchanges.
3. The Commission has adopted rules for intraLATA dialing parity implementation in Montana. 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the "dialing parity rules" or "rules"). See ARM 38.5.4101 through 38.5.4120. ARM 38.5.4120 requires Valley to implement intraLATA dialing parity pursuant to a Commission-approved plan.

4. ARM 38.5.4120(1) allows interested parties a reasonable opportunity to comment on a LEC's intraLATA equal access plan. On January 14, 1999, AT&T filed the only comments on Valley's Plan.

5. Following a review of Valley's Plan the Commission makes the following findings and conclusions.

#### **FINDINGS OF FACT AND COMMISSION DECISION**

6. The Commission established the intraLATA equal access implementation rules "to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)." ARM 38.5.4101, entitled "SCOPE AND PURPOSE OF RULES." Subsection (2) provides further indication of purpose in adopting the rules:

...The commission imposes this subchapter to encourage competitive entry, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The rules were adopted after giving opportunity to comment to all interested parties. They reflect a careful, reasoned consideration of all comments received, both in response to AT&T's original petition for the rulemaking and in response to later formal rulemaking inquiries. They were adopted specifically for implementing intraLATA equal access in Montana.

7. ARM 38.5.4120(1) states that ILECs "shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in ARM 38.5.4101 through 38.5.4116." ARM 38.5.4120(1) also provides that interested parties who wish to comment on a LEC's toll dialing parity plan shall have a reasonable opportunity to do so.

8. ARM 38.5.4120 provides that Valley's Plan must describe how ARM 38.5.4101 through 38.5.4116 will be carried out and include information addressing the following:

- (a) detailed information explaining how and when carriers will be notified of the implementation schedule;
- (b) the language to be used in and the manner of distribution of, the customer notification letter;
- (c) a description of Valley's anticipated cost of implementation, including Valley's specific implementation costs, the vehicle that Valley intends to use to recover implementation costs, and the cost recovery time frame;
- (d) a description of Valley's proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with Valley in its role as a local exchange provider in a competitively neutral manner following implementation.

We address the general subtopics of intraLATA equal access implementation with respect to Valley's Plan below:

**A. Part II. Implementation Schedule**

9. Valley's scheduled implementation date for all its exchanges is April 6, 1999. Valley will implement the full "2-PIC" carrier selection methodology required by ARM 38.5.4103(2). All residential, business and payphone customers will be offered intraLATA equal access via the 2-PIC method.

**B. Part III. Customer Lists and Carrier Notification Procedures**

10. *Carrier notification:* ARM 38.5.4120(3) requires that Valley provide notice to registered interexchange carriers no less than 120 days prior to the actual implementation date. The notice must include the implementation schedule, terms and conditions of participation and ordering procedures. All carriers wishing to participate in presubscription must respond to Valley within 30 days. Further, Valley may not allow participation by unregistered telecommunications providers.

11. On December 15, 1998, the Commission approved Valley's carrier notification language. Carrier notification was bifurcated from Valley's Plan in order for Valley to meet the 120 day deadline required by ARM 38.5.4120(3).

12. The Commission's approval of carrier notification permitted Valley to notify registered carriers by means of a Commission-established electronic mailing list or "listserv" in lieu of first class mail. Valley elected to use the electronic "listserv." The Commission required Valley to mail its participation form to those carriers who could not be contacted electronically.

13. *Customer lists:* ARM 38.5.4105(2) requires a LEC or primary toll carrier make available to all registered carriers that intend to offer equal access a complete list of the primary toll carrier's customer by name, address and phone number within 45 days of receipt of a BFR. The Commission requires that Valley make available such list, on request, to all registered carriers that intend to offer intraLATA equal access. Charges for such list shall be cost based and nondiscriminatory.

14. *PIC change requests:* Valley's Plan does not state when it will begin accepting letters of authorization (LOAs) or customer requests to change an intraLATA carrier. ARM 38.5.4116(1)(e) requires LECs to accept LOAs within the 60 days prior to implementation. Valley is required to begin accepting LOAs and customer requests for an intraLATA carrier selection no later than 60 days prior to implementation. In the case of multiple LOA submissions, the last dated LOA shall be processed. Valley shall accept and process LOAs that conform to ARM 38.5.3801 through ARM 38.5.3810, the emergency slamming rules adopted by the Commission in Docket no. L.99.1.1-RUL, and §69-3-1304, MCA.

C. **Part IV: Customer Notifications, Education, and Safeguards**

15. Customer notification is addressed in several of the Commission's rules. ARM 38.5.4120(1)(b) states that a LEC's plan must describe how notification to end users will be done. It also must include the language the LEC will use in its customer notification letter and describe the manner of distribution of such letter.

16. ARM 38.5.4105(4) requires all informational materials, forms and scripts to be "complete, clear and unbiased." It further requires local exchange carriers to promptly make any changes required by the Commission before using them. Pursuant to ARM 38.5.4104 and at least 30 days prior to its scheduled implementation, Valley must provide written notification to subscribers that describes intraLATA dialing parity and explains presubscription procedures. Information provided pursuant to ARM 38.5.4104 shall also inform customers with existing interLATA PIC freezes on their accounts that their freeze will extend to their existing intraLATA toll carrier, Nemont Communications, Inc., until the end users take action to change.

17. *Existing customer notification:* Valley's Plan states that it will provide written notification to its customers describing intraLATA dialing parity and explaining presubscription procedures. Valley attached as Exhibit A its proposed format to notify customers. Valley states that it will provide customer notification via direct mail or as a "bill stuffer" prior to March 6, 1999. Valley's Plan for notifying existing customers is consistent with Commission rules and its written notification contains a good explanation of intraLATA 1+ presubscription that should help its customers understand this often-confusing concept.

18. *New customer notification:* Valley's Plan provides that all new customers who commence local service after the mailing to existing customers and before equal access presubscription is implemented shall be provided information from Valley about their carrier

selection options at the time they sign up for local service. Valley will provide a copy of the notification for existing customers to new subscribers who subscribe to local service between March 5 and April 6, 1999.

19. These new subscribers may select both their primary interLATA and intraLATA carriers or be assigned “no-PIC” status. Valley did not address waiver of PIC charges for customers who do not choose a PIC prior to new service installation. Presently, Valley waives charges for interLATA PIC selections for 30 days after new service is installed and has indicated informally that it will follow this practice for intraLATA PIC selections as well. The Commission finds this to be in the public interest and requires this modification to the plan.

20. *Waiver period:* ARM 38.5.4111(1) states that “no charge shall be imposed for a customer’s initial selection of a primary intraLATA carrier. Each LEC shall allow customers to change their selection of a primary intraLATA carrier one time only at no charge within 90 days following implementation of intraLATA dialing parity in an exchange.”

21. Valley’s Plan states that no charge will be imposed for 90 days following customer notification. This language, coupled with the customer notification procedures outlined in ARM 38.5.4104, would effectively limit the waiver period to 60 days and is not consistent with Valley’s customer notification letter. Valley must allow its customers to select an intraLATA carrier once without charge within 90 days following the implementation of intraLATA equal access. Subsequent changes will be assessed pursuant to ARM 38.5.4111.

22. *PIC charges:* ARM 38.5.4111 states that PIC change charges shall be “the same as those imposed for changing interLATA carriers.” Valley’s Plan proposes to charge the following for PIC changes: (1) \$5.00 to change either an interLATA or intraLATA PIC, (2) \$7.50 to simultaneously change interLATA and intraLATA PICs to the same carrier, and (3)

\$10.00 to simultaneously change interLATA and intraLATA PICs to two separate carriers.

These charges do not comply with ARM 38.5.4111 and are not approved. Until Valley demonstrates to the Commission that its PIC change costs support a higher charge, Valley shall charge the applicable rates outlined in ARM 38.5.4111.

23. *Customer Safeguards:* Valley's customer notification letter implies that its customers must inform Valley when they select an alternate intraLATA carrier. Valley's letter provides, "if you would like to select another long distance company to handle these [intraLATA] calls, you will need to notify VALLEY TELECOMMUNICATIONS INCORPORATED of your selection." The Commission's dialing parity rules do not require end users to notify their current intraLATA carrier when they select another carrier. Valley's end users may select an alternate intraLATA carrier either by contacting the new carrier or by contacting Valley.

24. Valley states that it will follow Montana statutes and administrative rules with regard to "slamming" and obtaining required authorizations for PIC changes. Valley's Plan further provides that all customers who have interLATA PIC freezes on their account will have their PIC freezes placed on their intraLATA service as well.

25. Valley's Plan provides that a list of all participating registered interexchange carriers who have responded during the 30-day period following Valley's carrier notice and their toll free telephone numbers will be attached to the customer notification. The notification provides procedures for changing from the present intraLATA carrier. Valley's notice to end users contains sufficient information to educate customers on intraLATA dialing parity and procedures for requesting a PIC change.

26. *Business office practices:* ARM 38.5.4116 provides for safeguards to ensure that the development of intraLATA competition will not be impeded by LEC practices following equal access presubscription. Subsection (1)(a) requires that Valley's customer information and procedures used to provide new customers information about carrier selection options when they sign up for service be competitively neutral and approved by the Commission prior to their use.

27. Valley's Plan states that its representatives will inform new local exchange end users of their right to choose an intraLATA carrier and, if they make no choice, they will be required to dial carrier access codes to place these calls. New and existing customers may communicate their choices of carriers directly to Valley through the local business office or they may do so indirectly through their selected carriers for either interLATA or intraLATA toll.

28. For all customer-initiated contacts regarding local service matters, ARM 38.5.4116(1)(b) includes important safeguards. It provides, "When handling customer-initiated contacts regarding local service matters such as a change in service, [LEC] business office personnel may not engage in promotional efforts for the local exchange carrier's toll service offerings." Subsection (1)(c) further provides that when a customer contacts a LEC's business office to change the PIC from the LEC to a competitor, "the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another)."

29. Valley states that it will handle all customer-initiated contacts for PIC changes in a neutral manner. However, Valley's Plan does not address how interexchange carrier's names will be presented to the requesting end user. Further, many of the Commission's previously expressed concerns about contract handling by local exchange carriers who provide intraLATA toll service apply to Valley because intraLATA toll service is provided by an affiliate. Therefore, the Commission imposes some requirements for these contacts.

30. Valley is required to provide, in random order, the names of all carriers providing intraLATA interexchange service in its area. The random list shall be scrambled at least once per month.

31. In addition, ARM 38.5.4105(4) requires Valley to provide proposed business office scripts to the Commission for review as part of its implementation plan. The rule requires that the scripts be filed so they can be reviewed by the Commission prior to approval or modification of the Plan. Valley is required by rule to submit the scripts its customer service representatives will refer to and will be trained to use to discuss intraLATA dialing parity for new service requests and customer contacts for changes in service other than “general service” contacts.

32. Valley submitted the following script:

You are now able to choose an interexchange carrier to handle your long distance IntraLATA as well as InterLATA calls. Choosing your preferred IntraLATA carrier means that a special access code will no longer be required to have that carrier handle those types of long distance calls. There are several carriers available and if you already have a preference I can take your request now. Or, if you would prefer, I can read the list of carriers available in your area.

Valley’s script is sufficient to advise customers of their choices for intraLATA carriers and is competitively neutral as required by Commission rule.

33. The Commission recognizes that a script will not be appropriate for all calls. Some contacts will require that Valley’s representatives adapt their conversation based on individual circumstances. The script provides the necessary information, however, and as long as the representative conveys the information provided for in the script, such deviations are acceptable.

34. The Commission has imposed marketing restrictions for local exchange carriers who provide intraLATA toll. Valley’s affiliate, Nemont, provides intraLATA toll to Valley’s

subscribers. Therefore, reasonable LEC restrictions related to marketing on customer-initiated calls to Valley's business office apply. The Commission concludes that it is reasonable to prohibit Valley from initiating marketing and promotional activities for Nemont's intraLATA services on contacts for new service, transfers of service and number changes.

**D. Part V: Costs Recovery**

35. Valley's Plan states that it will incur incremental costs to implement intraLATA dialing parity. Major cost categories cited by Valley include: (1) switching upgrade to allow 2-PIC presubscription, (2) support systems, (3) customer notification, (4) office personnel training, and (5) implementation activities to migrate subscribers to their carrier of choice. All these costs are recoverable pursuant to ARM 38.5.4115.

36. ARM 38.5.4120 requires Valley's Plan to describe the anticipated cost of implementation, including its specific intraLATA presubscription costs, the vehicle that it intends to use to recover them, and the time frame for recovery. Valley did not submit cost support data defining the incremental costs associated with implementing intraLATA equal access. However, Valley states that it will notify the Commission if and when it seeks to recover these costs.

37. The Commission will not require Valley to provide a cost analysis and is satisfied with Valley's proposal. The public interest is best served by waiving the requirement for cost information for Valley. If Valley incurs substantial unanticipated costs to implement dialing parity and files additional materials to support a surcharge, the Commission will address cost recovery at that time.

### **CONCLUSIONS OF LAW**

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Valley is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.
2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.
3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.
4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

### **ORDER**

THEREFORE, based on the foregoing, IT IS ORDERED that Valley's intraLATA dialing parity implementation Plan is approved as discussed herein.

DONE AND DATED this 18th day of February, 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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GARY FELAND, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.  
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

